IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL

Government Appeal No. 1670 of 2001
(Old No. 1307 of 1990)

State of U.P. ……..Appellant

Vs.

Madan Mohan
S/o Madho Ram
R/o Village Pant K werali
P.S. Bageshwar
District Almora. ….Respondent.

Shri A. Rab, learned Additional Government Advocate for the State.
Shri Nand Prasad, learned counsel for the respondent.

Coram: Hon'ble Prafulla C. Pant, J.
Hon'ble Dharam Veer, J.

Oral: Hon'ble Prafulla C. Pant, J.

This appeal, preferred under Section 378 of Code of Criminal Procedure, 1973 (herein-after for brevity referred as Cr.P.C.), is directed against the judgment and order dated 29.03.1990, passed in Sessions Trial No. 11 of 1989, whereby learned Sessions Judge, Almora, has acquitted respondent Madan Mohan of the charge of offence punishable under Section 302 of Indian Penal Code, 1860 (herein after referred as I.P.C.).

2. We heard learned counsel for the parties.

3. Prosecution story in brief is that P.W. 2 Hari Ram, lodged First Information Report on 17.09.1988 with police station Bageshwar at about 10:00 P.M. In said report he told the police that at about 5:30 P.M. on that day, Devki Devi (deceased), wife of Ram Lal (P.W. 5) was murdered. The informant has narrated the story in said report by saying that he heard cries of Ram Lal and his minor children and went to them. Ram Lal (P.W. 5) was disclosing to his son Soban Ram (P.W. 6) that Devki Devi (deceased wife of Ram Lal), has been murdered by Madan Mohan (present respondent). Having heard this, P.W. 2 Hari Ram, called the villagers and found that dead body of Devki Devi was lying over a pathway. Before lodging the First Information Report, he proceeded towards the house of Madan Mohan (accused/respondent) and inquired from him what had happened. According to Hari Ram (P.W. 2) Madan Mohan, admitted having inflicted injuries on the person of Devki Devi with a spade. He further reported to the police in the First Information Report that the confession was made by the accused in the presence of Kailash Chandra Pathak (P.W. 4), Kedar Datt Joshi, Gokulanand Pathak, Madho Ram, Mohan Chandra Joshi and Gopal Ram. It is further narrated in the prosecution story mentioned in the First Information Report that accused Madan Mohan wanted that he should be taken to the police. On the basis of the First Information Report, the police registered the case under Section 302 I.P.C. against the accused Madan Mohan

and the crime was investigated. After taking into possession the dead body of Devki Devi, a inquest report (Ext. A-3) was prepared by the police. Also, sketch of the dead body (Ext. A-7), police form NO. 13 (Ext. A-9) and letters to the Chief Medical Officer (Ext. A-8 and Ext. A-10), requesting for post mortem examination of the dead body were prepared. Dr. N.D. Punetha (P.W. 1) conducted autopsy on the dead body at about 3:00 P.M. on 18.09.1988 and prepared post mortem report (Ext. A-1). Sub-Inspector A.M. Singh (P.W. 8), investigated the crime, interrogated the witnesses and after completing the investigation, submitted the charge sheet (Ext. A-15) against Madan Mohan.

5. Learned Magistrate, on receipt of the charge sheet, after giving necessary copies to the accused, as required under Section 207 of Cr.P.C., committed the case to the Court of Sessions for trial. Learned Sessions Judge, after hearing the prosecution and the defence framed charge of offence punishable under Section 302 I.P.C. against accused Madan Mohan, who pleaded not guilty and claimed to be tried. On this, prosecution got examined P.W. 1 Dr. N.D. Punetha, who conducted the post mortem examination, P.W. 2 Hari Ram, informant, P.W. 3 Madho Ram, P.W. 4 Kailash Chandra Pathak (before whom extra judicial confession was allegedly made by the accused), P.W. 5 Ram Lal (husband of the deceased), P.W. 6 Soban Ram

(son of the deceased), P.W. 7 Head Constable Rampal Singh, who prepared the check report of the First Information Report and P.W. 8 S.I. A.M. Singh (Investigating Officer). The evidence adduced by the prosecution was put to the accused under Section 313 Cr.P.C. regarding which he alleged that evidence adduced against him is false. He has alleged that he has been implicated due to enmity. However, no evidence is given on behalf of the defence. After hearing the parties, learned Sessions Judge, found that the charge of offence punishable under Section 302 I.P.C. is not proved beyond reasonable doubt against the accused Madan Mohan and consequently, acquitted the accused vide its judgment and order dated 29.03.1990. Aggrieved by said judgment and order, this appeal was preferred by the State before Allahabad High Court in the year 1990, from where it has been received by transfer to this Court under Section 35 of U.P. Reorganisation Act, 2000, for its disposal.

6. Before further discussions, it is pertinent to mention here that the ante mortem injuries found on the person of the deceased at the time of post mortem examination, which are mentioned in Ext. A-1, as under:-

1. ***Incised wound 10Cm X 2Cm X bone deep, present vertically on the right side of the face, extending from middle of***

forehead to the ankle of mandible. Margins are clear cut and well defined.

2. ***Incised wound 18C X 3Cm X Meningis deep present on the occipital region of the head, extending vertically to the nape of the neck. Margins are clear cut and well defined.***

On internal examination, it was found that zygomatic arch is cut underneath of injury No. 1. Also, skull bone was found fractured under injury No. 2 and brain matter was coming out. In the opinion of the Medical Officer, cause of death was due to the ante mortem injuries received by the deceased.

7. From the statement of P.W. 2 Hari Ram, the informant, who found body of the deceased lying, and that of P.W. 5 Ram Lal, husband of the deceased, P.W. 6 Soban Ram, son of the deceased and P.W. 3 Madho Ram, brother of Ram Lal, it is clear that Devki Devi, wife of Ram Lal, died unnatural death due to the injuries suffered by her. This fact gets corroborated from the statement of Medical Officer (P.W. 1 Dr. N.D. Punetha, who conducted post mortem examination, as mentioned above). However, the question remains, who committed murder of Devki Devi. The trial court has taken the view that there is no eye-witness of commission of crime. On behalf of the State, it is

argued before us that learned trial court, has erred in law by holding that there was no eye-witness of commission of crime. In this connection, our attention was drawn to the statement of P.W. 5 Ram Lal and P.W. 6 Soban Ram. We have gone through the statement of these two witnesses. On close scrutiny of the evidence, we are in agreement with the trial court that in the cross-examination, witnesses have admitted having reached at the place of occurrence after more than half-an-hour, as such, it cannot be said that the trial court has committed any error of law in taking the view that these witnesses have also not witnessed the actual commission of crime. Apart from this, as pointed out by learned counsel for the respondent in the inquest report, it is mentioned that place of incident was at a distance of some 300 mtrs. (In hilly terrain) and as such otherwise also it would not have been possible to witness the crime from one house to the place of occurrence, where the incident has taken place.

8. Another piece of evidence, pressed on behalf of the prosecution against the accused Madan Mohan is the alleged extra judicial confession given by the accused in the presence of several witnesses. P.W. 2 Hari Ram, informant in his statement on oath has nowhere stated what has been exactly stated by Madan Mohan to him regarding the commission of murder by him. As such, his statement on oath is contrary to what he has mentioned in the First Information Report. That

being so, it cannot be said that the statement of P.W. 4 Kailash Chandra Pathak that Madan Mohan accepted in his presence having committed murder of Devki Devi, does not get corroboration either from P.W. 2 Hari Ram or any other witnesses examined by the prosecution. The trial court while appreciating the evidence on record, has rightly mentioned that in the case of retracted extra judicial confession, the court has to take caution and it must be proved what were the actual words said by the accused and whether the same gets corroborated from other evidence on record or not. What has been mentioned in the First Information Report is not the same what has been stated by P.W. 4 Kailash Chandra Pathak. As such, we are in agreement with the trial court that it cannot be said that the alleged extra judicial confession is proved beyond reasonable doubt.

9. In view of above discussion, this Court is not inclined to interfere with the impugned judgment and order, whereby the respondent has been acquitted of the charge framed against him. Accordingly the appeal is dismissed.

(Dharam Veer, J.) **(Prafulla C. Pant, J.)**

Dt: 15.02.2007
Sweta